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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

June 12, 1998

Ms. Jennifer Myers  
Common Carrier Bureau  
Federal Communications Commission  
2025 M Street, N.W.  
Room 6325  
Washington, D.C. 20554

EX PARTE OR LATE FILED

Re: CC Docket 96-28

Dear Ms. Myers:

During our meeting with you, Rose Crellin, and Craig Stroup on May 28, 1998 on behalf of the Inmate Calling Service Providers Coalition ("ICSPC") regarding interim compensation for independent inmate calling service ("ICS") providers, you asked that we provide you with a written follow-up on a number of points. This letter provides the information that you requested.

First, you asked that we explain for the record the circumstances under which we believe interim compensation for independent ICS providers is warranted. Like other payphone providers, ICS providers are entitled to compensation "for each and every completed intrastate and interstate call using their payphones." 47 U.S.C. § 276(b)(1)(A). Where an ICS provider makes available its equipment for use by inmates placing interLATA calls, and sends the call to the confinement facility's presubscribed carrier without receiving any revenue in return, the Commission must prescribe some measure of fair compensation.<sup>1</sup> Thus, under the current *Payphone Order* ICS providers are entitled to Commission-prescribed compensation where the ICS provider routes the call to another carrier and where the ICS provider has no compensation agreement with that carrier. 47 CFR § 64.1300(c).

<sup>1</sup> This letter does not address the separate issue of whether ICS providers are fairly compensated for calls which they handle themselves but which are subject to a state-imposed rate cap.

### The Necessity for Interim Compensation

The MFJ barred the BOCs from carrying interLATA calls. In 1988, the MFJ court ruled implemented that ruling in the payphone context by requiring that the location owner select the presubscribed IXC for BOC payphones. Since the BOCs had no ability to negotiate the terms of the agreement with the presubscribed IXC to which they were required to route interLATA calls, they had no ability to recover any revenue for those calls. That system remained in place until the Telecommunications Act of 1996 and the Commission's *Payphone Order*.

Section 276(b)(1)(D) directed the Commission to grant the BOCs the right to negotiate with location providers for the presubscription of interLATA carriers for their payphones, unless the Commission determined that such rights would be contrary to the public interest. In the *Payphone Order*, the Commission ruled that the BOCs may participate in the selection of the presubscribed IXCs from their payphones. *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Report and Order*, 11 FCC Rcd 20541, 20660 (1996). Where the BOCs are free to negotiate with the presubscribed IXC, they are presumptively able to recover fair compensation for interLATA calls from their payphones, including inmate payphones.

The BOCs assert, however, that many of their inmate phones are still under contracts entered into prior to the Commission's ruling. (The Commission has ruled that Section 276 grandfathered all such contracts in place as of February 8, 1996. *Payphone Order* at 20666.) For their payphones still under pre-existing contracts, the BOCs are still sending interLATA calls to an IXC with which they did not negotiate a compensation arrangement, and therefore presumably are not recovering compensation for those calls.<sup>2</sup> It is for those payphones that the BOCs have requested interim compensation. Thus, the basis for their compensation is not that the BOCs are currently prohibited by law from recovering compensation. It is that, due to the prior prohibition, their payphones are subject to an existing contract that does not provide for compensation for certain calls.

For a significant minority of their payphones, ICS providers are in the same position as the BOCs. In some instances, where a facility entered into a long-term contract

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<sup>2</sup> By way of example, suppose that a BOC inmate service provider contracted in 1995 with a confinement facility to provide inmate payphone service for a five-year term ending in 2000. Suppose also that at that same time in 1995 the confinement facility entered into an arrangement with AT&T to carry the interLATA calls from the facility for the same five year period. Until the contracts expire in 2000, the BOC will still be sending its interLATA traffic to AT&T, with whom it has no arrangement regarding compensation.

with an interLATA carrier that was separate from its contract with the BOC for inmate calling equipment and intraLATA service, the contract with the interLATA carrier has continued in effect even after the contract with the BOC terminated. As a result, independent ICS providers that replace the BOC provider inherit the BOC's contractual disability. Because the confinement facility has already contracted separately for the interLATA traffic, the independent provider can only contract for the intraLATA calls and must send all interLATA calls to the facility's chosen carrier, with which the independent provider has no compensation arrangement. Thus, even though independent ICS providers were never under any consent-decree restriction on negotiating with IXCs for presubscription, ICS providers are subject, in some cases, to the same contractual disabilities that affect the BOCs. In these situations, independent providers are entitled to interim compensation.

The fact that ICS providers are able to recover compensation for other classes of calls in no way affects whether they should receive compensation for interLATA calls routed to IXCs with which they have no compensation arrangement. Section 276 makes clear that payphone providers are entitled to fair compensation "for each and every completed. . . call." 47 U.S.C. § 276(b)(1)(A). ICS providers thus have the right to be compensated for all classes of calls and cannot be required to look to compensation recovered for one class of call to subsidize another. If that was the case, then there would have been no basis for prescribing compensation for local coin calls or any other particular class of call. In any case, as the ICSPC has explained in previous filings in this docket, the existing compensation for local and intraLATA calls received by ICS providers is frequently inadequate to fairly compensate the provider for those calls because of state-imposed rate ceilings on the rates that ICS providers can charge for local and intraLATA calls. This compensation for local and intraLATA calls is even less adequate to provide fair compensation for interLATA calls.

Compensation for independent ICS providers is also critical from a competitive standpoint. If the BOCs receive interim compensation, but independent ICS providers do not, the BOCs will have a significant new revenue stream, unavailable to independent providers, which the BOCs could use to recover costs and make commission payments to location providers.

#### **Administration of Interim Compensation**

Second, you asked how interim compensation for inmate providers would be administered. ICSPC envisions a procedure similar to that in place for dial-around compensation. The ICS provider, whether a BOC or an independent, would submit to the IXC(s) in question a list of the affected inmate payphones, by ANI. The ICS provider would provide evidence, such as an affidavit, showing that calls from its payphones were

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routed to the carrier and that there was no contractual compensation arrangement with the carrier.

**Data Regarding Inmate Payphones Eligible for Interim Compensation**

Third, you asked for some data regarding the number of inmate payphones potentially affected by interim compensation. While there is no hard data available, ICSPC estimates that there are on the order of 150,000 – 200,000 inmate phones in service. ICSPC believes it would not be unreasonable to estimate that LECs provide approximately 80% of those payphones, with the remaining 20% divided among independent ICS providers and IXC's. At this point, since the *Payphone Order* grandfathered existing contracts, a large number of BOC inmate payphones presumably would qualify for interim compensation. As the contracts expire, and new contracts are negotiated, ICSPC would expect that the number of eligible payphones would begin to decrease. As for independent ICS provider inmate payphones, the ICSPC estimates that roughly 5% of independent inmate payphones are eligible for interim compensation.

If you have any questions, or would like any other points clarified for the record, please do not hesitate to call either Bob Aldrich at (202) 828-2236 or Jacob Farber at (202) 828-2290.

Very truly yours,



Robert F. Aldrich  
Jacob S. Farber

*Attorneys for the Inmate Calling Service  
Providers Coalition*

cc: Rose Crellin  
Craig Stroup